

PT 97-27
Tax Type: PROPERTY TAX
Issue: Charitable Ownership/Use

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS

| | | |
|-----------------------|---|--------------------------|
| PARKSIDE DEVELOPMENT |) | |
| CORPORATION, |) | Docket No: 94-16-1301 |
| APPLICANT |) | |
| |) | |
| v. |) | Real Estate Exemption |
| |) | for 1994 Tax Year |
| |) | |
| DEPARTMENT OF REVENUE |) | P.I.N.: 08-10-113-004 |
| STATE OF ILLINOIS |) | |
| |) | Alan I. Marcus, |
| |) | Administrative Law Judge |

RECOMMENDATION FOR DISPOSITION

APPEARANCE: Mr. Thomas J. McNulty of Keck, Mahin & Cate appeared on behalf of Parkside Development Corporation.

SYNOPSIS: This proceeding raises the issue of whether the subject parcel qualifies for exemption from 1994 real estate taxes under 35 ILCS 200/15-65.¹ In relevant part, that provision states as follows:

¹. In People ex rel Bracher v. Salvation Army, 305 Ill. 545 (1922), the Illinois Supreme Court held that the issue of property tax exemption will depend on the statutory provisions in force at the time for which the exemption is claimed. This applicant seeks exemption from 1994 real estate taxes. Therefore, the applicable statutory provisions are those contained in the Property Tax Code (35 ILCS 200\1-1 et seq).

All property of the following is exempt when actually and exclusively used for charitable or beneficent purposes, and not leased or otherwise used with a view to profit:

(c) old people's homes, facilities for persons with a developmental disability, and not-for-profit organizations providing services or facilities related to the goals of educational, social and physical development, if, upon making application for the exemption the applicant provides affirmative evidence that the home or facility or organization is an exempt organization under paragraph (3) of Section 501(c) of the Internal Revenue Code [26 U.S.C.A. Section 501] or its successor, and either: (i) the bylaws of the home or facility or not-for-profit organization provide for a waiver or reduction, based on an individual's ability to pay, of any entrance fee, assignment of assets, or fee for services, or, (ii) the home or facility is qualified, built, or financed under Section 202 of the National Housing Act of 1959, [12 U.S.C.A. Section 1701 *et seq.*] as amended.

The controversy arises as follows:

On March 20, 1995, Parkside Development Corporation (hereinafter "PDC" or the "applicant"), through counsel, filed a real estate exemption complaint with the Cook County Board of (Tax) Appeals (hereinafter the "Board"). Said complaint alleged that the subject property was exempt from taxation under the nursing home provisions contained in 35 ILCS 200/15-65. The Board reviewed this complaint and recommended to the Department of Revenue (hereinafter the "Department") that the requested exemption be denied. On January 19, 1996, the Department accepted this recommendation by issuing a certificate finding that the parcel is not in exempt use.

Applicant filed a timely request for hearing on February 1, 1996. After holding a pre-trial conference, the Administrative Law

Judge conducted an evidentiary hearing on August 22, 1996. Following submission of all evidence and a careful review of the record, it is recommended that the subject parcel not be exempt from real estate tax for the 1994 assessment year.

FINDINGS OF FACT:²

A. Preliminary Considerations and Description of the Subject Property

1. The Department's jurisdiction over this matter and its position therein are established by the admission into evidence of Dept. Group Ex. No. 1 and Dept. Ex. No. 2.

2. The subject property is a 139,211 square foot parcel commonly known as the The Moorings of Arlington Heights or Lutheran General Health Care Center (hereinafter the "Moorings" or the "Center"). It is located at 811 East Central Road, Arlington Heights, IL and identified by Permanent Index Number 08-10-113-004. Tr. pp. 11 - 12; Dept. Group Ex. No. 1.

3. The Center is part of a larger, 42-acre continuing care retirement community that also includes independent living units and a day care center.³ Tr. pp. 9, 11 - 12.

4. Applicant assumed ownership of the Center via a trustee's deed dated December 22, 1986. *Id*; Applicant Ex. No. 1.

². In order to facilitate better organization and promote greater clarity, I have divided the Findings of Fact into the following categories: Preliminary Considerations and Description of the Subject Property (Findings 1 through 4); Applicant's Organizational Structure (Findings 5 through 11); Applicant's Financial Structure (Findings 12 through 16) and Applicant's Operations and Use of the Subject Parcel (Findings 17 through 31).

³. Neither the independent living units nor the day care center are at issue in this proceeding. Tr. p. 12.

B. Applicant's Organizational Documents

5. PDC was originally incorporated under the General Corporation Law of the State of Delaware on October 28, 1986. Its parent organization and sole corporate member is Lutheran General HealthSystem, (hereinafter LGHS), an Illinois not-for-profit corporation. Tr. p. 11; Applicant Ex. Nos 2 and 3.

6. On October 19, 1988, the Internal Revenue Service granted LGHS a group exemption from federal income taxation. This exemption, which lists PDC as part of the exempt group, was granted pursuant to Section 501(a) of the Internal Revenue Code and was based on the Service's conclusion that LGHS qualified as an organization described in Sections 501(c)(3) and 509(a)(3) of that statute. Applicant Ex. No. 4.

7. The Department granted PDC an exemption from Use and related taxes on July 23, 1992. Its exemption number is E9982-1753-02. Applicant Ex. No. 5.

8. PDC's original Articles of Incorporation provide, *inter alia*, that:

A. It is organized exclusively for charitable, educational, and scientific purposes consistent with Section 501(c)(3) of the Internal Revenue Code;

B. It may provide residential facilities which are specifically designed to meet a combination of physical, emotional, recreational social, religious and similar needs of aged persons;

C. It is authorized to adopt policies and procedures designed to address the need[s] of its residents for protection against financial risks associated with the later years of life;

D. No part of the corporation's net earnings shall inure to the benefit of, or be

distributable to, its members, trustees, officers, or other persons except that the corporation may pay reasonable compensation for services rendered and make expenditures in furtherance of its stated purposes;

E. The corporation shall not devote any substantial part of its activities to political affairs;

F. The corporation shall have no authority to issue capital stock.

Applicant Ex. No. 2.

9. PDC was granted a certificate of authority to transact business in Illinois on December 19, 1986. Said Certificate contains recitations similar to those set forth above. It also provides, *inter alia*, that PDC may:

A. Own or operate facilities or own other assets for public use and the public's health and welfare;

B. Own, lease, or otherwise deal with all property, real and personal, to be used in furtherance of the above purposes;

C. Maintain some form of continuing arrangement with organizations, facilities and/or health personnel to address the physical, and if necessary, the mental well-being of its residents, provided that in no instance shall the corporation engage in the practice of medicine.

Id.

10. Applicant's bylaws are similar to its Articles of Incorporation and certificate of authority in that all three documents contain recitations describing PDC's not for profit purposes, activities and policies. The bylaws also contain prohibitions against pecuniary benefit and forbid the corporation

from engaging in the practice of medicine. They do, however, permit PDC to:

A. Consider the financial circumstances of individual residents;

B. Permit reduction or waiver of fees and charges otherwise applicable to a resident as the corporation may deem appropriate and consistent with the financial needs and priorities of the corporation;

C. Adopt policies and procedures designed to address the above needs;

D. Own or operate facilities or own other assets for public use and the public's health and welfare;

E. Own, lease, or otherwise deal with all property, real and personal to be used in furtherance of the corporation's stated purposes.

11. Applicant's by-laws also provide, *inter alia*, as follows:

A. That the sole member of applicant's corporation shall be LGHS;

B. That a board of directors, appointed by LGHS, shall exercise all policy-making powers of the corporation;

C. That the corporation shall have the following officers: a chairman, vice-chairman, president, vice-president, secretary and treasurer;

D. That the chairman, vice-chairman and president shall be nominated by LGHS;

E. In the event of dissolution, the board of directors shall first make provision for and pay all appropriate corporate debts and then distribute any remaining corporate assets to LGHS, if that entity is then in existence and qualified under Section 501(c)(3) of the Internal Revenue Code. If LGHS is not in existence, the board is then authorized to distribute any remaining assets to such organizations as may qualify as exempt under Section 501(c)(3).

Id.

C. Applicant's Financial Structure⁴

12. PDC has no capital stock or shareholders. Its fiscal year runs from July 1 through June 30. Applicant Ex. Nos. 2, 6.

13. PDC earned \$10,795,505.00 in total revenues during the fiscal year ended June 30, 1994. Said revenues were attributable to the following sources:

| <u>SOURCE</u> | <u>AMOUNT</u> | <u>% OF TOTAL</u> |
|---|------------------------|-------------------|
| Program services | \$9,949,909.00 | 90% ⁵ |
| Dividends and interest from securities | \$1,128,952.00 | 10% |
| Net rental income | \$ 23,949.00 | <1% |
| Contributions, gifts, Grants, etc. | \$ 654.00 | <1% |
| Net loss from sale of assets other than inventory | <u>\$ (307,959.00)</u> | 3% |
| Total revenues | \$10,795,505.00 | |

Applicant Ex. No. 6.

14. Expenses for the same period amounted to \$12,688,185.00

They were apportioned as follows:

| <u>EXPENSE</u> | <u>AMOUNT</u> | <u>% OF TOTAL</u> |
|--|----------------|-------------------|
| Salaries and wages paid to non-officers, directors, etc. | \$2,923,655.00 | 23% |
| Pension plan contributions | \$ 92,464.00 | <1% |
| Other employee benefits | \$ 414,806.00 | 3% |
| Payroll taxes | \$ 193,023.00 | 2% |
| Accounting fees | \$ 10,000.00 | <1% |
| Legal fees | \$ 63,876.00 | <1% |
| Supplies | \$1,035,562.00 | 8% |

⁴. Most, if not all of the information contained in this section is based on data compiled in the federal tax returns (IRS forms 990) admitted into evidence as Applicant Ex. No. 6.

⁵. All percentages shown in this section are approximations derived by dividing the category of income or expense (e.g. program services) by the appropriate total. Thus, for example, \$9,949,909.00/\$10,795,505.00 = .923 (rounded) or approximately 90%.

| | | |
|---------------------------------------|-----------------|-----|
| Telephone | \$ 11,659.00 | <1% |
| Postage & shipping | \$ 3,154.00 | <1% |
| Occupancy | \$ 1,183,710.00 | 9% |
| Equipment rental and maintenance | \$ 313,549.00 | 2% |
| Printing and publications | \$ 11,098.00 | <1% |
| Travel | \$ 3,644.00 | <1% |
| Conferences, conventions and meetings | \$ 5,920.00 | <1% |
| Interest | \$ 1,627,071.00 | 13% |
| Depreciation, etc. | \$ 1,509,659.00 | 12% |
| Other Expenses: ⁶ | | |
| *Cont. Allow [sic] & | | |
| *Free Care | \$ 274,668.00 | 2% |
| *Purchased Services | \$ 297,620.00 | 2% |
| *Unspecified professional fees | \$ 370,716.00 | 3% |
| *State Taxes | \$ 23,770.00 | <1% |
| *Financing expenses | \$ 937,776.00 | 7% |
| *Insurance | \$ 767,507.00 | 6% |
| *Educational expenses | \$ 22,759.00 | <1% |
| *Miscellaneous | \$ 46,290.00 | |
| *Amortization | \$ 544,229.00 | 4% |
| Total expenses | \$12,688,185.00 | |

Id.

15. PDC's total revenues for the period beginning July 1, 1994 and December 1, 1994 amounted to \$6,936,579. Said revenues were attributable to the following sources:

| <u>SOURCE</u> | <u>AMOUNT</u> | <u>% OF TOTAL</u> |
|---|-----------------|-------------------|
| Program services | \$5,357,343.00 | 90% |
| Interest on savings | \$ 14,995.00 | <1% |
| Dividends and interest from securities | \$ 548,144.00 | 10% |
| Net loss from sale of assets other than inventory | \$ (6,202.00) | <1% |
| Total Revenues | \$ 5,914,280.00 | |

Id.

6. These expenses, and those shown in Finding of Fact 16, (*infra* p. 8) were itemized on schedules that were attached to the 990s. Due to the relevance of free (or what applicant lists as "charity") care, (*See, infra* pp. 17 - 18), I have chosen to reproduce these schedules rather than show the total amount of "other expenses."

16. Expenses for the same period amounted to \$6,990,365.00

They were apportioned as follows:

| <u>EXPENSE</u> | <u>AMOUNT</u> | <u>% OF TOTAL</u> |
|--|-----------------|-------------------|
| Salaries & wages paid to non-officers, directors, etc. | \$1,744,875.00 | 25% |
| Pension plan contributions | \$ 1,208.00 | <1% |
| Other employee benefits | \$ 339,156.00 | 5% |
| Payroll taxes | \$ 107,408.00 | 2% |
| Accounting fees | \$ 10,500.00 | <1% |
| Legal fees | \$ 9,886.00 | <1% |
| Supplies | \$ 574,014.00 | 8% |
| Telephone | \$ 14,076.00 | <1% |
| Postage & shipping | \$ 4,479.00 | <1% |
| Occupancy | \$ 554,358.00 | 8% |
| Equipment rental and maintenance | \$ 145,744.00 | 2% |
| Printing and publications | \$ 2,427.00 | <1% |
| Travel | \$ 3,308.00 | <1% |
| Conferences, conventions and meetings | \$ 7,018.00 | <1% |
| Interest | \$ 988,279.00 | 14% |
| Depreciation, etc. | \$ 805,516.00. | 11% |
| Other Expenses: | | |
| *Cont. Allow [sic] & | | |
| *Free Care | \$ 253,225.00 | 4% |
| *Purchased Services | \$ 177,063.00 | 2% |
| *Unspecified professional fees | \$ 117,858.00 | 3% |
| *State Taxes | \$ 39,060.00 | <1% |
| *Financing expenses | \$ 375,375.00 | 5% |
| *Insurance | \$ 412,838.00 | 6% |
| *Educational expenses | \$ 17,782.00 | <1% |
| *Miscellaneous | \$ 12,812.00 | <1% |
| *Amortization | \$ 272,100.00 | 4% |
| Total expenses | \$ 6,990,365.00 | |

Id.

D. Applicant's Operations and Use of the Subject Premises During 1992

17. The Center initially housed approximately 80 senior citizens and provided sheltered and intermediate care to its residents. Tr. pp. 21, 24.

18. Sheltered care is provided to senior citizens who (for the most part) can function independently but require assistance with one or two activities of daily living. Tr. p. 16.

19. Intermediate care is provided to those needing assistance with most if not all of their daily living activities. *Id.*

20. Applicant commenced construction of an 88-bed skilled care wing in September of 1992. This highly-intensive program was designed to provide round-the-clock nursing, as well as rehabilitation and various types of therapy, to senior citizens. Tr. pp. 16-17.

21. Applicant completed construction of the skilled care portion of the Moorings in April, 1994 and opened for occupancy on May 17 of that year. Tr. pp. 17, 21 - 22.

22. Once operational, the skilled care wing provided the Center with a total of 188 individual resident rooms. These rooms were occupied according to the following schedule:

| | |
|--------------------------|----------|
| A. Skilled care | 88 rooms |
| B. Sheltered care | 68 rooms |
| C. Intermediate care ... | 32 rooms |

Tr. pp. 22, 24 - 25.

23. Admission to the Moorings is limited to those who, after a professional medical evaluation, are determined to be in need of nursing care and whose needs can be met by the facility. The Center admits private pay clientele and Medicare recipients. Applicant Ex. No. 7.

24. The Center also requires each prospective resident to complete an admission information packet which includes information about the person's insurance and medical history. The packet also includes a financial admission form on which a prospective resident is asked to list his/her total income from sources such as Social Security, annuities, pensions, dividends, real estate and trust funds. Applicant Ex. No. 7.

25. The packet further includes an assignment of all insurance benefits (including those paid by Medicare and Medicaid) in favor of the Center as well as various treatment authorization and advanced directive forms. *Id.*

26. Regardless of whether they are self-pay or Medicare recipients, all prospective residents must pay a \$1,000.00 deposit. This amount is held without interest and is due upon submission of the appropriate reservation forms. It is credited toward the first month's bills of all admitted residents but refunded in full to those whose applications are denied. *Id.*

27. Residents are also required to make payment of two months' room charges upon admission. The initial month is credited to the resident's first month bill. The second is refunded upon discharge if the resident does not have an outstanding balance for miscellaneous charges. *Id.*

28. Hospitalized residents must continue paying room charges until their rooms have been released and any possessions have been removed by their families. *Id.*

29. Residents who fail to pay or are excessively late in paying their room charges are subject to removal from the Moorings. *Id.*

30. The terms of each resident's occupancy is governed by a contract. The ones entered into by private pay residents provide *inter alia* as follows:

A. The resident must pay a basic daily fee⁷ plus the aforementioned deposit;

B. In the event the resident has insufficient assets and income to meet his/her financial obligations to the Center, the resident (and any fiduciary party) shall take the necessary steps to obtain financial assistance from any appropriate governmental or private program for which the resident is eligible and for which the Center accepts reimbursement;

C. The Center shall send the resident (as well as any fiduciary or other parties required by law) an itemized statement detailing the charges for extra products and services provided to the resident during the previous month;

D. The Center may charge a fee equal to 9% per annum, or such higher amount allowed by law, of all fees and charges outstanding for more than 30 days as of the first day of the month;

E. If the resident's physical or mental condition changes and the Center determines it

⁷. The Center's daily rates for skilled and intermediate care are as follows: skilled medicare, \$200.00; skilled semi-private room, \$130.00; skilled private room, \$175.00; intermediate semi-private room, \$120.00 and intermediate private room, \$175.00.

The Moorings also adheres to the following daily rates for sheltered care: garden-level private room with private bath, \$76.00; garden level private room with shared bath, \$74.00; garden level semi-private room, (2 beds to a room), \$64.00; first and second floor private room with private bath, \$80.00; first and second floor private room with shared bath, \$78.00; first and second floor semi private room, \$69.00; first and second floor small suites, \$104.00; and first and second floor suites, \$127.00. Applicant Ex. No. 7.

cannot provide appropriate care, the resident will be transferred to another facility for appropriate care;

F. The contract shall terminate 7 days after such transfer unless the resident makes a written request to reserve accommodations on or before the date of transfer, pays the basic daily fee in full to date and obtains written approval of such reservation from the director;

G. The Center reserves the right to involuntarily transfer or discharge a resident for reasons permitted by law;

H. Any excess fees or charges paid in advance shall be refunded to the resident or his/her estate following termination of the contract;

I. All periodic fees shall be prorated as of the date of termination;

J. If the resident (or any fiduciary party) breaches the contract by failing to pay all charges when due, then the Center is entitled to all costs of collection, including court costs and reasonable attorney's fees.

Id.

31. Medicare contracts are basically the same as those entered into by private pay residents. They do, however, replace the language concerning payment of basic daily fees with provisions which state that the Medicare program will reimburse the Center for certain skilled services that are delineated in a specific schedule that is attached to the contract. These contracts also provide that the resident will be required to pay certain other "[a]llowable [c]harges" which include but are not limited to fees for certain products and services not covered by Medicare and certain deductibles and co-insurance amounts under the Medicare program as listed on the aforementioned schedule. *Id.*

CONCLUSIONS OF LAW:

On examination of the record established this applicant has not demonstrated, by the presentation of testimony or through exhibits or argument, evidence sufficient to warrant exempting the subject parcel from 1994 real estate taxes. Accordingly, under the reasoning given below, the determination by the Department that the subject parcel does not satisfy the requirements for exemption set forth in 35 **ILCS** 200/15-65 should be affirmed. In support thereof, I make the following conclusions:

Article IX, Section 6 of the Illinois Constitution of 1970 provides as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

The power of the General Assembly granted by the Illinois Constitution operates as a limit on the power of the General Assembly to exempt property from taxation. The General Assembly may not broaden or enlarge the tax exemptions permitted by the Constitution or grant exemptions other than those authorized by the Constitution. Board of Certified Safety Professionals, Inc. v. Johnson, 112 Ill.2d 542 (1986). Furthermore, Article IX, Section 6 is not a self-executing provision. Rather, it merely grants authority to the General Assembly to confer tax exemptions within the limitations imposed by the Constitution. Locust Grove Cemetery Association of Philo, Illinois v. Rose, 16 Ill.2d 132 (1959). Moreover, the General Assembly is not constitutionally required to exempt any property from taxation and may place restrictions or limitations on those

exemptions it chooses to grant. Village of Oak Park v. Rosewell, 115 Ill. App.3d 497 (1st Dist. 1983).

Pursuant to its Constitutional mandate, the General Assembly enacted the Property Tax Code 35 **ILCS** 200/1-3 *et seq.* The provisions of that statute that govern disposition of the instant proceeding are found in Section 200/15-65. In relevant part, that provision states as follows:

All property of the following is exempt *when actually and exclusively used for charitable or beneficent purposes*, and not leased or otherwise used with a view to profit:

(c) old people's homes, facilities for persons with a developmental disability, and not-for-profit organizations providing services or facilities related to the goals of educational, social and physical development, if, upon making application for the exemption the applicant provides affirmative evidence that the home or facility or organization is an exempt organization under paragraph (3) of Section 501(c) of the Internal Revenue Code [26 U.S.C.A. Section 501] or its successor, and either: (i) the bylaws of the home or facility or not-for-profit organization provide for a waiver or reduction, based on an individual's ability to pay, of any entrance fee, assignment of assets, or fee for services, or, (ii) the home or facility is qualified, built, or financed under Section 202 of the National Housing Act of 1959, [12 U.S.C.A. Section 1701 *et seq.*] as amended.

35 **ILCS** 200/15-65. [Emphasis added].

It is well established in Illinois that a statute exempting property from taxation must be strictly construed against exemption, with all facts construed and debatable questions resolved in favor of taxation. People Ex Rel. Nordland v. the Association of the Winnebago Home for the Aged, 40 Ill.2d 91 (1968) (hereinafter

"Nordlund"); Gas Research Institute v. Department of Revenue, 154 Ill. App.3d 430 (1st Dist. 1987). Based on these rules of construction, Illinois courts have placed the burden of proof on the party seeking exemption, and have required such party to prove, by clear and convincing evidence, that it falls within the appropriate statutory exemption. Immanuel Evangelical Lutheran Church of Springfield v. Department of Revenue, 267 Ill. App. 3d 678 (4th Dist. 1994).

Here, applicant posits that the Center is exempt under Section 200/15-65 merely because PDC satisfies the specific requirements set forth in subsection (c) of that statute. This argument draws support from the following factors: first, that PDC is included in LGHS's group exemption from federal income tax; and second, that applicant's bylaws permit PDC to waive or reduce fees and charges if such action is consistent with the corporation's financial interest. It does not, however, recognize that the first paragraph of Section 200/15-65 (which contains the italicized use language) applies to *all* subsections contained therein. Thus, in order to effectuate the rules mandating strict statutory construction, and thereby maintain the Constitutional limitations which prohibit the General Assembly from enlarging the class of exempt property beyond that set forth in Article IX, Section 6, I conclude that the Moorings cannot be exempted under Section 200/15-65 unless PDC supplements the 501(c)(3) and fee waiver/reduction evidence with appropriate proof of exempt use. See, Methodist Old People's Home v. Korzen, 39 Ill.2d 149, 156 (1968), (hereinafter "Korzen"); Nordlund, *supra* at 99 - 100; Small v. Pangle, 60 Ill.2d 510, 515, 519 (1975); Friendship Manor of the

Branch of King's Daughters and Sons, Inc. v. Department of Revenue, 91 Ill. App.3d 91, 94, 95 (3rd Dist. 1980), (hereinafter "Friendship Manor").

An analysis of whether this applicant has met its burden of proof begins with some fundamental principles: First, that the word "exclusively," when used in Section 200/15-65 and other tax exemption statutes means "the primary purpose for which property is used and not any secondary or incidental purpose." Korzen, *supra* at 157. See also, Gas Research Institute v. Department of Revenue, 145 Ill. App.3d 430 (1st Dist. 1987); Pontiac Lodge No. 294, A.F. and A.M. v. Department of Revenue, 243 Ill. App.3d 186 (4th Dist. 1993). Second, that "statements of the agents of an institution and the wording of its governing documents evidencing an intention to [engage in exclusively charitable activity] do not relieve such an institution of the burden of proving that ... [it] actually and factually [engages in such activity]." Morton Temple Association v. Department of Revenue, 158 Ill. App. 3d 794, 796 (3rd Dist. 1987). Therefore, "it is necessary to analyze the activities of the [applicant] in order to determine whether it is a charitable organization as it purports to be in its charter." *Id.*

Further, there are well-settled guidelines employed to analyze exemption claims arising under Section 200/15-65 and its predecessors. These standards, first enunciated in Korzen, begin with the following definition of "charity," which the court used to analyze whether appellant's senior citizen's home was exempt from property taxes under the Revenue Act of 1939:

... a charity is a gift to be applied consistently with existing laws, for the benefit of an indefinite number of persons, persuading them to an educational or religious conviction, for their general welfare - or in some way reducing the burdens of government.

39 Ill.2d at 157 (citing Crerar v. Williams, 145 Ill. 625 (1893)).

The Korzen court also observed that the following "distinctive characteristics" are common to all charitable institutions:

- 1) they have no capital stock or shareholders;
- 2) they earn no profits or dividends, but rather, derive their funds mainly from public and private charity and hold such funds in trust for the objects and purposes expressed in their charters;
- 3) they dispense charity to all who need and apply for it;
- 4) they do not provide gain or profit in a private sense to any person connected with it; and,
- 5) they do not appear to place obstacles of any character in the way of those who need and would avail themselves of the charitable benefits it dispenses.

Id.

Retirement homes have provided our courts with a fertile context for applying the above criteria. Nordlund, *supra*; Small v. Pangle, *supra*; Friendship Manor, *supra*; Willows v. Munson, 43 Ill.2d 203 (1969); Plymouth Place Inc. v. Tully, 54 Ill. App.3d 657 (1st. Dist. 1977); Good Samaritan Home of Quincy v. Department of Revenue, (4th Dist. 1985); Fairview Haven v. Department of Revenue, 153 Ill. App.3d 763 (4th Dist. 1987); Wyndemere Retirement Community v. Department of Revenue, 274 Ill. App.3d 455 (2nd Dist. 1995), (hereinafter "Wyndemere").

The above authorities have employed a totality of factors analysis when determining whether the retirement homes at issue conform to the criteria enunciated in Korzen. While these courts have not found any one factor to be determinative, they have found the following to be indicative of non-exempt use: conditioning admission or continued residence on payment of substantial admission fees or undertaking other financial commitments above and beyond daily room charges (Friendship Manor, *supra* at 94; Plymouth Place v. Tully *supra* at 661; Good Samaritan Home, *supra* at 1041; Fairview Haven, *supra* at 772); assessing room charges and/or other fees which exceed daily operating costs, and therefore, imply that the home is being operated for profit (Small v. Pangle, *supra* at 515); obtaining most, if not all, operating funds from room charges and other fees rather than the sources denoted in Korzen (Small v. Pangle, *supra* at 516); limiting admission to those who are ambulatory, self-sufficient or in good health (Nordlund, *supra* at 101); evicting residents or otherwise failing to accommodate those who become unable to fulfill their financial obligations to the home (Small v. Pangle, *supra* at 516); allocating living quarters in a non-uniform manner such that the spaciousness or desirability of accommodations increases with a person's ability to pay (Friendship Manor, *supra* at 94; Wyndemere, *supra* at 460); statements in organizational documents which permit, but do not mandate, that the home provide free care and, requiring that amount of free care be consistent with the home's capacity to provide same or otherwise linking dispensation of such care to the home's financial resources (Willows v. Munson, *supra* at 206; Plymouth Place v. Tully, *supra* at 661 - 662; Wyndemere, *supra* at 460).

This applicant's free care policy is phrased in permissive rather than mandatory terms. Moreover, its bylaws require that any free care dispensed must be consistent with PDC's "financial needs" and corporate priorities. Applicant's organizational documents may provide some evidence that its corporate priorities include dispensing charity. However, information contained in applicant's federal income tax returns seems to warrant the opposite inference.

The returns (Applicant Ex. No. 6) establish that PDC spends the *de minimus* amount of 3%⁸ on what it calls "free care" and allocates most (if not all) of its other expenses to internal operations. These documents further verify that applicant derives between 90 and 95% of its total revenues from program services rather than sources specified in Korzen. Such considerations, coupled with the complete absence of any evidence establishing that applicant devotes a substantial portion of its expenditures to free care or otherwise dispenses charity "to all who need it," lead me to conclude that applicant's use of the subject parcel does not qualify as "exclusively charitable" within the meaning of Illinois law. See, Wyndemere, *supra* at 460.

PDC seeks to defeat the preceding conclusion by relying on the testimony of its executive director, Mary Fitzgerald, who testified

⁸. I derived the 3% figure by the following computations: first, I computed total free care of \$527,893.00 by adding the amount of free care shown in Finding of Fact 14 (274,668.00) to the amount of free care shown in Finding of Fact 16 (\$253,225.00); next, I computed total expenses of \$19,678,550.00 by adding the total expenses shown in Finding of Fact 14 (\$12,688,185.00) to the total expenses shown in Finding of Fact 16 (\$6,990,365.00); finally, I derived the rounded figure of 3% (or .0268) by dividing \$527,893.00 into \$19,678,550.00.

that four of the Center's occupants "currently" receive services on a fee reduction or waived fee basis. (Tr. p. 17). This testimony is technically irrelevant to the present inquiry because it fails to establish that such persons received partial or total free care during the 1994 assessment year. Even assuming *arguendo* that this evidence were relevant, it can only establish that 4 of 188 residents (or approximately 2% of the Center's total population) received what applicant refers to as "charity care." This *de minimus* figure, coupled with the paucity of charitable expenditures detailed above, prevents me from concluding that the Moorings was primarily used for exempt purposes during 1994. See, Nordlund, *supra* at 102; Wyndemere, *supra* at 460.

The instant record also contains a plethora of other evidence establishing that the Center engages in certain practices found to be indicative of non-exempt use in the Korzen line of cases. The Center ousts persons who fail to pay their room charges and does not hold room reservations for more than 7 days unless a transferred resident pays the appropriate daily fee. These practices may serve legitimate business purposes. Nevertheless, they defeat exemption by effectively denying accommodations or reservations to those who cannot afford the required payments. Cf. Wyndemere, *supra* at 460 - 461.

In addition, all prospective residents must submit a \$1,000.00 deposit with their reservation forms and prepay two months' room charges when they are admitted. Such financial obstacles are inconsistent with the requirements for charitable use established in Korzen and its progeny. Furthermore, the schedule of daily rates

establishes that accommodations at the Center become more spacious or desirable as the resident's capacity to pay increases. Friendship Manor, supra; Wyndemere, supra.

Viewed in their totality, the above practices appear to be consistent with those found in the non-exempt commercial market place. As such, they inherently lack "the warmth and spontaneity indicative of charitable impulse." Korzen, supra at 158. Therefore, I conclude that the Center's primary use during 1994 was "not to provide charity, but to provide a certain enhanced lifestyle to the elderly who [could] afford to pay for it." Wyndemere, supra at 461.

PDC attempts to weaken this conclusion by relying on its exemption from federal income tax. This exemption, in and of itself, or combined with the statements in applicant's organizational documents, does not establish the requisite exempt use. People ex rel County Collector v. Hopedale Medical Foundation, 46 Ill.2d 450 (1970). Moreover, while this exemption establishes that PDC is a not for profit organization for purposes of 501(c)(3) and 509(a)(3) of the Internal Revenue Code, these Sections do not preempt Section 200/15-65 or the other statutory provisions governing exemptions from Illinois real estate taxation. Consequently, neither this exemption, nor any statements contained in applicant's organizational documents, are dispositive of the present inquiry, which is whether the subject parcel was used for exempt purposes in 1994.

Taken as a whole, the preceding analysis clearly demonstrates that this inquiry should be answered in the negative. Nonetheless, applicant argues that the skilled care wing should be exempted

pursuant to Weslin Properties v. Department of Revenue, 157 Ill. App.3d 580 (2nd Dist. 1987). There, the court held that appellant's health care facility could be exempted from real estate taxes even though it was under construction during the year in question.

This holding makes clear that the "charitable use" requirement can be satisfied where the applicant proves that the subject parcel is being developed for exempt purposes. However, it also implies that the parcel cannot be exempted unless the applicant proves that the ultimate use⁹ qualifies as "charitable" under Korzen and its progeny.

The above analysis demonstrates that the entire Moorings complex was primarily used for non-exempt business purposes during 1994. Given this conclusion, I fail to see how the skilled care portion thereof was being developed for "charitable" use during the first portion of that year. Applicant's reliance on Weslin Properties is therefore misplaced and must fail. Accordingly, I recommend that the Department's decision to deny the Moorings exemption from 1994 real estate taxes be affirmed.

WHEREFORE, for all the above-stated reasons, the subject property should not be exempt from 1994 real estate tax.

Date

Alan I. Marcus,
Administrative Law Judge

⁹. I use the term "ultimate use" to refer to that certain, specific, primary use which occurs after construction ceases.